(1991) 08 MAD CK 0095

In the Madras High Court

Case No : T.C. No. 811 of 1982 (Appeal No. 51 of 1982)

Associated Agencies APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 13-08-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 34

Citation : (1991) 08 MAD CK 0095

Hon'ble Judges : A.S. Anand, C.J;Kanakaraj, J

Bench : Division Bench

Advocate : R. Gangadharan, for the Appellant; D. Srinivasan, Additional Government Pleader (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—This is an appeal filed by the assessee against the order of the Joint Commissioner, dated January 18, 1982, passed in exercise of the suo motu powers of revision u/s 34 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter called "the Act").

2. The assessee is a dealer at Ooty, who reported a total and taxable turnover of Rs. 37,26,524.07 and Rs. 20,92,487.99, respectively for the assessment year 1975-76. Exemption was claimed on a turnover of Rs. 3,01,465.38 representing second sales of "Gramoxone". The assessing authority disallowed the claim of exemption holding that the commodity "Gramoxone" comes under "weedicides" which were liable at 4 per cent. multi-point tax. After noticing certain other defects also the accounts of the assessee had been rejected and recourse was had to best of judgment assessment. The assessing authority, accordingly, estimated the total and taxable turnover of the assessee at Rs. 34,39,567.12 and Rs. 23,11,213.35, respectively. Additional tax and surcharge were also levied on the above turnover at the prescribed rates. The assessee went up in appeal before the Appellate Assistant Commissioner, Coimbatore, and disputed the levy of multi-point tax on the second sale turnover of "Gramoxone". The levy of additional tax was also questioned. The Appellate Assistant Commissioner agreed

with the assessee and held that the commodity "Gramoxone" falls under entry 66 of the First Schedule to the Act and since the sales were only second sales, the assessee was not liable to pay any tax thereon. The Joint Commissioner examined the order of the Appellate Assistant Commissioner with the connected record and proposed to revise that order. A notice was accordingly issued to the assessee and after inviting its objections and considering the same, the Joint Commissioner confirmed the proposal after holding that at the relevant point of time, for the assessment year in question, the commodity "Gramoxone", which falls under "weedicides and fungicides", did not fall under entry 66 of the First Schedule and that the said commodity was liable at multi-point rate of taxation. Consequently, the order of the appellate authority was set aside and that of the assessing authority restored. The assessee questions the correctness of the order of the Joint Commissioner through this appeal.

3. Learned counsel for the appellant did not dispute that "Gramoxone" falls under "weedicides and fungicides". His argument, however, was that entry 66 of the First Schedule, as it existed at the relevant time, dealt with "pesticides and insecticides" and he went on to argue that "Gramoxone" was included in the expression "pesticides" as it was a species, of "fungicides and weedicides". Learned counsel argued that entry 66 of the First Schedule had been amended and substituted by a new entry, which included "fungicides", and since that amendment incorporated by Act 7 of 1977 was of a clarificatory nature in respect of the original entry, the Appellate Assistant Commissioner was right in holding that the commodity "Gramoxone" was covered under entry 66 of the First Schedule and that the Joint Commissioner fell in error in not noticing the true character of the commodity and holding that since the amendment of the entry had not been given retrospective effect, the benefit of that entry was not available to the assessee. Learned counsel also placed reliance on section 3(e) of the Insecticides Act, 1968 (Central Act 46 of 1968) to urge that the expression "pesticides" included "weedicides and fungicides".

4. The Additional Government Pleader (Taxes) in reply, only relied upon the order made by the Joint Commissioner and submitted that it did not call for any interference.

5. Before we proceed to consider whether "Gramoxone", which is the brand name for the commodity aimed to control weeds (weedicides and fungicides), would fall under entry 66 of the First Schedule to the Act or not, it would be advantageous to notice the history of entry 66 of the First Schedule.

6. By Act 11 of 1967, entry 66 was inserted in the First Schedule with effect from July 1, 1967. The entry read :

7. Since the year of assessment in the instant case is 1975-76, it is entry 66 of the First Schedule, as it existed prior to September 13, 1977, which requires our consideration. The entry at that time, as already noticed, covered "insecticides and pesticides". It appears that certain doubts existed in the minds of the

dealers of insecticides and pesticides about the rate of tax on various commodities. The assessee herein addressed a communication to the Board of Revenue on August 30, 1976, seeking certain clarifications and the Board of Revenue, in B.P. Rt. No. 4406/76 dated September 29, 1976, informed the assessee about the rates of tax on various commodities, including agrochemicals. The Board stated :

"(4) Agrochemicals :

(a) Pesticides and insecticides. 3(1/2) single point under item 66 of the First Schedule at the point of first sale in the State.

(b) Fungicides, weedicides, 4% multi-point."

micronutrients zinc sulphate.

It seems that the amendment was also effected of the entry by Act 7 of 1977 only because of the doubts which were being entertained about the true ambit and scope of entry 66 of the First Schedule. The Board of Revenue was, thus clear that prior to the amendment of entry 66 by Act 7 of 1977, the entry covered only "pesticides and insecticides" and it was by Act 7 of 1977 that the original entry 66 of the First Schedule was substituted to include, besides insecticides and pesticides, "fungicides, herbicides, rodenticides and combinations thereof". It is a well-settled principle that for determining the meaning or connotation of words describing an article or commodity in relation to the sales tax enactments, the words or expressions must be construed in the sense in which they are commonly understood in the trade. What is, therefore, required to be seen is, whether the commodity is considered by the trade as falling within the description of the concerned entry. Generally speaking, an item in the Schedule must be construed independent of any definition given under any other statute. Articles mentioned in the First Schedule are listed according to their independent existence, commonly recognised as separate and distinct goods or commodities. Sales tax law is intended to tax sales of different commercial commodities and, therefore, each item in the list of the specified items is a taxable item. If the argument of the learned counsel for the appellant were to be accepted that "fungicides, including weedicides, herbicides and rodenticides", are included in the expression "pesticides", it would imply that the substitution made in 1977 of entry 66 of the First Schedule was a meaningless formality. Such an intention cannot be attributed to the Legislature. If "fungicides, herbicides and rodenticides" were included in the expression "insecticides" or "pesticides", as canvassed by the learned counsel, one fails to understand the logic of the amendment made in 1977. If the argument on behalf of the assessee were to be accepted, it would almost render the amendment redundant and the courts do not lean in favour of making any provision of a statute redundant. In our opinion, the Amending Act of 1977 is not clarificatory in nature, for had it been so, the entry would have read differently. The acceptance of the argument would tantamount to rewriting the original entry.

Courts cannot do that. The amending Act, in our opinion, is clearly declaratory in nature and, for the first time, it included in entry 66 with effect from September 13, 1977, "fungicides, herbicides and rodenticides" besides "insecticides and pesticides and combinations thereof". Since it is not disputed that "Gramoxone" is only a species of "weedicides and fungicides", it is only after September 13, 1977 that the benefit of single point tax at 3(1/2) per cent. is available in so far as "Gramoxone" is concerned. Prior to September 13, 1977, "fungicides", besides herbicides, rodenticides or their combinations, were taxable only at multi-point rate. This would be the proper method of interpreting entry 66 in the light of the subsequent amendment. Subsequent legislations can, indeed, be looked into for unearthing the legislative intention behind the existing legislation and when we take into consideration the clarification issued by the Board of Revenue in B.P. Rt. No. 4406/76 dated September 29, 1976 and the subsequent substitution of entry 66 of the First Schedule by Act 7 of 1977, we are able to comprehend that the original entry 66 did not, and was not intended to, take within its compass "fungicides, herbicides, rodenticides and combinations thereof". An item in the Schedule has to be construed independent of the definition given under the other statutes. Therefore, the reliance placed by the learned counsel for the appellant on the Insecticides Act, 1969, to show that fungicides and weedicides are included in the expression "pesticides" cannot improve the situation. The Legislature is presumed to be aware of the need of people and while classifying the entries in a particular Schedule, if it chose not to include certain commodities in the First Schedule, its intention is obvious that it did not wish to extend the benefit of single point taxation in respect of those commodities. Since "fungicides" was not included in entry 66, as it existed at the relevant time, and it was specifically added in the original entry by the Amending Act, it is obvious that the intention of the Legislature was to extend the benefit of single point to "fungicides" only from the date of the addition, viz., September 13, 1977. The commodities covered by the amended entry are wider than those in the original entry and since the effect of the amended entry was not made retrospective, it would be reasonable to hold that it was not the intention of the Legislature to employ the expanded entry for considering the original entry. The expression used in the entry, both as it originally existed and after its amendment, are commercially and popularly understood and it is fairly well-settled that the words or expressions must be construed in the manner in which they are understood in the trade. No aid can, therefore, be available from the publications of the Indian Standards Institute as to what "pesticides" are. Even the certificate issued by the Tamil Nadu Agricultural University to say that "pesticides" would include "fungicides" cannot advance the case of the appellant because, the Legislature in its supreme wisdom, brought "fungicides" to be included in entry 66 for the first time only by amending Act 7 of 1977 with effect from September 13, 1977.

8. The Joint Commissioner was, therefore, justified in confirming the proposal and holding that "Gramoxone", at the relevant time, was liable to tax at 4 per cent. multi-point and was not covered by entry 66 of the First Schedule and,

therefore, he rightly set aside the order of the Appellate Assistant Commissioner and restored that of the assessing authority. This appeal, therefore, merits dismissal and is hereby dismissed, but without any order to as to costs.

9. Appeal dismissed.

